

FINAL BILL REPORT

SHB 2876

C 196 L 16
Synopsis as Enacted

Brief Description: Addressing the foreclosure of deeds of trust.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Orwall, Kirby and Griffey).

House Committee on Judiciary
House Committee on Appropriations
Senate Committee on Financial Institutions & Insurance

Background:

Most loan obligations for residential real property in Washington are secured by deeds of trust. In 2011 the Foreclosure Fairness Act (Act) was enacted, making changes to the process related to the nonjudicial foreclosure of deeds of trust under the Deed of Trust Act (DOTA). As part of those changes, the Foreclosure Fairness Program (Program) was established.

A variety of agencies are involved with the Program. Their roles and responsibilities are set forth below:

- The Department of Commerce (Department) is charged with the overall development and management of the Program, including the mediation program. The Department is responsible for training, approving, and maintaining a list of approved foreclosure mediators and assigning them to mediation cases. The director of the Department authorizes expenditures from the Foreclosure Fairness Account (Account).
- The Housing Finance Commission administers the homeowner counseling program and oversees a toll-free hotline where homeowners in need of foreclosure prevention assistance can call and receive free foreclosure prevention counseling.
- The Department of Financial Institutions (DFI) is responsible for conducting homeowner prepurchase and postpurchase outreach and educational programs, and raising public awareness of the services provided under the Program.
- The Office of the Attorney General (AGO) Consumer Protection Division investigates consumer protection complaints and enforces deed of trust foreclosure laws.
- The Office of Civil Legal Aid (OCLA) contracts with qualified legal aid programs to provide free legal assistance to low-income and moderate-income homeowners in matters related to foreclosure.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Certain beneficiaries are required to remit a \$250 fee to the Department, for deposit into the Account, for each notice of default issued on owner-occupied residential real property in the state. This does not apply to: any beneficiary or loan servicer that is a federally insured depository institution and that certifies under penalty of perjury that it has issued, or directed the issue of, fewer than 250 notices of default in the preceding year; or, beneficiaries that are homeowners' or condominium associations.

Authorized expenditures from the Account are as follows:

- no less than 71 percent of the funds must be used for providing housing counselors to borrowers, except that this amount may be less than 71 percent if necessary to meet the funding level specified for the AGO Consumer Protection Division for enforcement and the Department;
- up to 6 percent, or \$655,000 per biennium, whichever amount is greater, to the AGO to be used to enforce the law with respect to deeds of trust;
- up to 2 percent to the OCLA to be used for the purpose of contracting with qualified legal aid programs for legal representation of homeowners in matters relating to foreclosure;
- up to 18 percent, or \$1.4 million per biennium, whichever amount is greater, to the Department to be used for implementation and operation of the Act; and
- up to 3 percent to the DFI to conduct homeowner prepurchase and postpurchase outreach and education programs.

Summary:

Authorized biennial expenditures of the monies in the Account are changed, as follows:

- \$400,000 to fund the counselor referral hotline;
- 69 percent of the remaining funds for the purposes of providing housing counseling activities;
- 8 percent of the remaining funds to the AGO to be used by the Consumer Protection Division to enforce the DOTA;
- 6 percent to the OCLA to be used for the representation of homeowners in matters related to foreclosure;
- 17 percent to the Department to be used for implementation and operation of the Act; and
- the DFI is no longer a recipient of funds from the Account.

A provision that required certain beneficiaries to remit \$250 per notice of default is repealed and replaced with a remittance requirement tied to notices of trustee's sale. A savings clause is included, preserving any existing right acquired or liability or obligation incurred under the repealed section.

Beginning July 1, 2016, certain beneficiaries must remit \$250 for every notice of trustee's sale recorded on residential real property, excluding the recording of an amended notice of trustee's sale and notices of trustee's sale for which a fee was paid under the repealed provision for a notice of default supporting that notice of trustee's sale. "Residential real property" includes residential real property with up to four dwelling units, whether or not the property or any part thereof is owner-occupied. The remittance requirement does not apply

to: any beneficiary or loan servicer that is a federally insured depository institution and that certifies under penalty of perjury that fewer than 50 notices of trustee's sale were recorded on its behalf in the preceding year; or, any homeowners' or condominium association beneficiaries.

The same reporting requirements as applied under the repealed section to remitting beneficiaries are made applicable to remitting beneficiaries under this new provision. Similarly, failure to comply with this new provision is an unfair or deceptive act in trade or commerce and an unfair method of competition under the Consumer Protection Act, just as was provided with respect to violations of the repealed section.

Votes on Final Passage:

House	97	0
Senate	48	0

Effective: July 1, 2016